**U.S. Equal Employment Opportunity Commission**

# Questions and Answers: No FEAR Act

Q: What is the No FEAR Act?

A: The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) became effective on October 1, 2003. The Act imposes additional duties upon Federal agency employers intended to reinvigorate their longstanding obligation to provide a work environment free of discrimination and retaliation.

Q: What are the new duties that the No FEAR Act places on a Federal agency?

A: The additional obligations contained in the No FEAR Act can be broken down into five categories.

- A Federal agency must reimburse the Judgment Fund for payments made to employees, former employees, or applicants for Federal employment because of actual or alleged violations of Federal employment discrimination laws, Federal whistleblower protection laws, and retaliation claims arising from the assertion of rights under those laws.
- An agency must provide annual notice to its employees, former employees, and applicants for Federal employment concerning the rights and remedies applicable to them under the employment discrimination and whistleblower protection laws.
- At least every two years, an agency must provide training to its employees, including managers, regarding the rights and remedies available under the employment discrimination and whistleblower protection laws.

- An agency must submit to Congress, EEOC, the Department of Justice, and OPM, an annual report setting forth information about the agency's efforts to improve compliance with the employment discrimination and whistleblower protection laws and detailing the status of complaints brought against the agency under these laws.
- An agency must post quarterly on its public Web site summary statistical data pertaining to EEO complaints filed with the agency.

Q: How are Federal employees, applicants and former employees notified of their rights and remedies?

A: Current employees should have received the required notification, either in paper form (e.g., memorandum or poster) or electronic form (e.g., e-mail, internal agency electronic site). Each agency's initial notice, which was due no later than November 17, 2006, should have been published in the Federal Register. If an agency has a public Web site, the notice must appear there as well. The Federal Register and public Web site notices fulfill the agency's notice obligation towards former employees and applicants. New employees must receive the notice within 90 days of entering on duty.

Q: What information must the notice contain?

A: At a minimum, the notice must contain the language set forth in OPM's implementing regulations. OPM's notice, which contains the minimum information necessary, can be accessed at **http://www.opm.gov/about_opm/nofear/notice.asp (http://www.opm.gov/about_opm/nofear/notice.asp)** .

Q: How often must employees receive No FEAR training?

A: Current employees should have received the applicable training on or before December 17, 2006. Thereafter, an agency must conduct training no less than every two years. New employees should receive the applicable training as part of the agency's orientation program. If an agency does not have an orientation program, new employees must receive the applicable training within 90 days of their appointment.

Q: When must the annual report be submitted and what types of information must it contain?

A: Within 180 days of the end of each fiscal year, an agency must submit its annual report to Congress, EEOC, DOJ and OPM.

Among the items that must be included in the report are the following: the number, status, and disposition of pending or resolved Federal court cases against the agency arising under the applicable employment discrimination and whistleblower protection laws; the amount of money the agency was required to reimburse the Judgment Fund; the number of individuals the agency disciplined and the types of discipline administered for violations of the employment discrimination and whistleblower protection laws; a description of the agency's policy for taking disciplinary action against employees for conduct inconsistent with employment discrimination and whistleblower protection laws; all the statistical data the agency is required to post on its public Web site; and, an analysis of the preceding information and any action the agency has or will take to improve its complaint and civil rights programs with the goal of eliminating employment discrimination and retaliation.

Q: What kind of information has to be posted on an agency's public web site?

A: Information to be posted includes, among other things: the number of complaints filed; the number of persons filing those complaints; the number of persons filing multiple complaints; the bases and issues alleged in the complaints; the average length of time in takes an agency to complete certain stages of the complaint process; the number of final agency actions in which discrimination is found, broken down by issue, basis, and whether a hearing was held; the number of pending complaints that were filed in previous fiscal years, including the number of persons who filed those complaints; and, the number of complaints in which an investigation was not completed in a timely manner. An agency is to post current fiscal year data, updated quarterly, as well as data for the past five fiscal years.

Q: What are EEOC's responsibilities under the No FEAR Act?

A: Title III of the No FEAR Act authorizes EEOC to prescribe the time, form and manner in which a federal agency shall post on its public Web site summary statistical data pertaining to EEO complaints filed with the agency. EEOC has done so by regulation. EEOC's No FEAR regulation can be found at **http://edocket.access.gpo.gov/2006/E6-12432.htm (http://edocket.access.gpo.gov/2006/E6-12432.htm)** .

Title III further requires EEOC to post on its public Web site summary statistical data relating to (1) hearings requested before an EEOC administrative judge and (2) appeals filed with EEOC from final agency actions. The information that must be posted about hearings and appeals parallels the information agencies must post about complaints (e.g., number of hearings requested and appeals filed, the bases and issues alleged in each, the number of findings of discrimination, and length of time to process hearings and appeals). This summary data can be found at **http://www.eeoc.gov/eeoc/statistics/nofear/index.cfm (https://www.eeoc.gov/no-fear/equal-employment-opportunity-data-posted-pursuant-title-iii-notification-and-federal)** .

Q: What are OPM's responsibilities under the No FEAR Act?

A: Title II of the No FEAR Act authorizes OPM, through a delegation of authority from the President, to issue rules regarding an agency's obligation to: 1) reimburse the Judgment Fund for payments made to employees, former employees, and applicants, because of actual or alleged violations of Federal antidiscrimination laws, whistleblower protection laws, and retaliation claims; 2) notify and train employees, former employees, and applicants, of their rights under antidiscrimination and whistleblower protection laws; and 3) report annually on certain topics regarding antidiscrimination and whistleblower protection laws, including disciplinary actions taken for conduct that is inconsistent with these laws. OPM's No FEAR regulations can be found at:
**http://edocket.access.gpo.gov/2006/06-4319.htm (http://edocket.access.gpo.gov/2006/06-4319.htm)** ;
**http://edocket.access.gpo.gov/2006/E6-11541.htm (http://edocket.access.gpo.gov/2006/E6-11541.htm)** ; and,
**http://edocket.access.gpo.gov/2006/E6-22242.htm (http://edocket.access.gpo.gov/2006/E6-22242.htm)** .

Finally, OPM must conduct a study of best practices in the executive branch for taking disciplinary action against employees for conduct that is inconsistent with employment discrimination and whistleblower protection laws. OPM will then issue advisory guidelines incorporating these best practices. Within 30 working days of their issuance, each agency must submit to Congress, EEOC, DOJ and OPM a statement indicating whether it has adopted the OPM guidelines, and if not, its reasons for not adopting them.